

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LAW OFFICES OF SHIMSHON WEXLER, P.C.,
a New York professional company, individually
and as the representative of a class of similarly-
situated persons,

Plaintiff,

v.

AICOM SOLUTIONS LLC d/b/a AICOM
CORPORATION; TIME WARNER CABLE LLC
d/b/a SPECTRUM; TIME WARNER CABLE
MEDIA LLC; CHARTER COMMUNICATIONS
INC.; CHARTER COMMUNICATIONS
OPERATING LLC; and JOHN DOES 1–10,

Defendants.

CASE NO. 1:17-cv-08573-AKH

THE CHARTER DEFENDANTS' NOTICE OF MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendants Time Warner Cable LLC, Time Warner Cable Media LLC, Charter Communications, Inc., Charter Communications Operating, LLC (“Charter Defendants”) file this Motion for Summary Judgment, seeking summary judgment as a matter of law on both claims asserted by Plaintiff Law Offices of Shimshon Wexler, P.C. (“Plaintiff”): (1) a claim for violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) because they allegedly “sent” a “facsimile” that was “unsolicited” and did not contain an “opt-out notice;” and (2) a piggyback claim for conversion because the “facsimile” allegedly deprived Plaintiff of the use of his “fax machine[], paper, toner, and employee time.” As the undisputed evidence conclusively shows, Plaintiff’s allegations are false, and his claims are subject to summary judgment.

Plaintiff's TCPA claim fails because: (1) none of the Charter Defendants sent the Transmission; (2) the Transmission was sent with Plaintiff's consent and thus did not require any "opt-out notice" under the TCPA; and (3) the Transmission at issue is not subject to the TCPA because it was not sent over a telephone line to a "telephone facsimile machine." Plaintiff's common-law conversion claim likewise fails because: (1) the Charter Defendants did not send the Transmission and cannot be vicariously liable for AICOM Philippines's conduct in doing so; (2) Plaintiff consented to the Transmission; (3) there is no evidence to establish any actionable injury suffered as a proximate result of AICOM Philippines's conduct in sending the Transmission; and (4) Plaintiff chose to print the Transmission and any resulting loss of ink or paper would be *de minimis* and thus not actionable. Finally, Plaintiff has no standing to bring the instant action as he contractually assigned away his claims to his virtual fax provider and his injunctive relief is moot and otherwise barred by the fact that he has an adequate remedy at law. Thus, there are no genuine issues of material fact as to the Charter Defendants' liability and they are entitled to judgment in their favor as a matter of law.

In support of their Motion for Summary Judgment, the Charter Defendants rely on the following: the Charter Defendants' Statement of Undisputed Material Facts, including the declarations and exhibits submitted concurrently therewith, the Charter Defendants' Memorandum of Law in Support of Motion for Summary Judgment, and all other pleadings and documents filed in this action, including any exhibits attached thereto.

WHEREFORE, the Charter Defendants respectfully pray that this Court grant their Motion for Summary Judgment and tax all costs incurred by the Charter Defendants in defending this action against Plaintiff.

Dated: August 3, 2018

Respectfully submitted,

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*Counsel for Defendants Time Warner Cable LLC, Time
Warner Cable Media LLC, Charter Communications, Inc.,
Charter Communications Operating, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2018, I electronically filed the foregoing in the United States District Court for the Southern District of New York using the CM/ECF system which will automatically send e-mail notification of such filing to any counsel that has entered an appearance.

This 3rd day of August, 2018.

/s/ Daniel H. Gaynor

Daniel H. Gaynor

*Counsel for Defendants Time Warner Cable LLC,
Time Warner Cable Media LLC, Charter
Communications, Inc., Charter Communications
Operating, LLC*